(2)

No. 88-1668

In the Supreme Court of the United States

October Term, 1988

ATLANTIC RICHFIELD COMPANY,

Petitioner,

v.

USA PETROLEUM COMPANY,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Do the plaintiff's lost sales and profits resulting from its competitor's vertical conspiracy to fix below-market prices constitute compensable antitrust injury?

The Ninth Circuit panel, relying on this Court's precedents, ruled that a vertical conspiracy to fix below-market prices is inherently anticompetitive under Section 1 of the Sherman Act and that damages inflicted on a competitor by the conspiracy constitute antitrust injury.

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COUNTERSTATEMENT OF THE CASE

The Parties

USA Petroleum Company[1] ("USA"), an independent gasoline marketer ("independent"), sells gasoline at retail to consumers. (CR 48: ¶ 3.) USA gasoline stations compete with ARCO-brand dealers in California and other western states. (CR 48: ¶ 17.)

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[1]Pursuant to Rule 28.1, USA certifies that its corporate affiliates and subsidiaries, not wholly owned, are USA Petroleum (Bermuda) Limited, Isla Petroleum Corporation and Gasolinas de Puerto Rico Corporation.

ARCO is a major integrated oil company that produces, refines and markets petroleum products. ARCO markets gasoline at wholesale to independently owned ARCO-brand dealers and at retail through company-owned stations. (CR 48: ¶¶ 4, 11-13.)

ARCO'S Price-Fixing Conspiracy

Beginning in April 1982, ARCO organized a vertical price-fixing scheme with its branded dealers to fix the resale price of gasoline at below-market levels. (CR 48: ¶¶ 24-25.) ARCO's purpose was to eliminate the independents, who traditionally operated low-overhead, high-volume stations that sold gasoline at prices well below the virtually identical prices charged by the major oil companies. (CR 48: ¶¶ 9-10, 14-15, 18-19, 25.)

ARCO's conduct demonstrates that the artifically low resale gasoline prices that it fixed would not have existed absent the conspiracy. ARCO targeted the ARCO-branded dealers who competed directly with independents and told them what retail prices to charge. ARCO monitored the retail prices daily and secured dealer compliance through coercive tactics. ARCO threatened to reduce gasoline supply, terminate operating agreements or eliminate price allowances to dealers who refused to charge the fixed price. (CR 48: ¶¶ 26-27, 37.)

ARCO's conspiracy had its intended effect. ARCO's below-market retail prices were lower than the prices paid by independents to purchase gasoline at wholesale.[2] (CR 48: ¶¶ 31, 39.) Independents, or anyone who did

[2]The conspiracy was funded by ARCO's manipulation of the intercompany "transfer" price of crude oil between its production and refining departments and its deliberate underpayment of federal windfall profit taxes and state taxes. (CR 48: ¶ 32.)

not participate in a vertical conspiracy, could no longer operate profitably. Many independents were forced to liquidate and exit the market. (CR 48: ¶ 18.) USA has managed to survive, but only by closing or selling off gasoline stations and drastically curtailing its retail operations. At its remaining stations, USA has lost considerable sales and profits. (CR 48: ¶¶ 18, 39-40.)

As independents disappeared in California, ARCO catapulted from the number four position in 1981 to the number one position by the end of 1983. (CR 48: ¶ 22.) An already oligopolistic marketplace has become even more concentrated and the price discipline once afforded by the independent market segment has been eliminated.

USA's Antitrust Complaint

On May 27, 1983, USA filed a complaint alleging that ARCO implemented a vertical price-fixing conspiracy in violation of Section 1 of the Sherman Act and attempted to monopolize the market in violation of Section 2 of the Sherman Act.[3] ARCO moved to dismiss the complaint, arguing that (1) USA lacked standing to sue for its Section 1 claim; and (2) ARCO did not have a dangerous probability of successful monopolization for the Section 2 claim. The district court denied ARCO's motion as to Section 1 but dismissed the Section 2 claim with leave to amend. *USA Petroleum Co. v. Atlantic Richfield Co.*, 577 F. Supp. 1296, 1301-02, 1304, 1308 (C.D. Cal. 1983). USA filed an amended complaint (CR 48), and ARCO again moved to dismiss the Section 2 claim. The district court denied

[3]USA also alleged that ARCO violated the Robinson-Patman Act and various state laws. These claims, on which ARCO did not move for summary judgment, have been stayed pending resolution of ARCO's petition for a writ of certiorari.

that motion. (CR 54.) ARCO answered the amended complaint on May 3, 1984. (CR 55.)

ARCO's Motion for Summary Judgment

Before any depositions had been taken and before the completion of document discovery, ARCO moved for summary judgment on USA's Section 1 price-fixing claim.[4] ARCO conceded, for purposes of its motion, that it committed a per se violation of Section 1 by organizing a vertical conspiracy with ARCO-brand dealers to fix below-market prices. ARCO's *sole* basis for summary judgment was that it had no dangerous probability of successfully monopolizing any relevant market. This unprecedented argument rested on two propositions: (1) a conspiracy to fix below market prices, even if antithetical to free market competition and a per se violation of Section 1, should create liability only if prices are fixed at "predatory" levels within the meaning of Section 2; and (2) these "predatory" levels cannot, as a matter of law, be fixed by conspirators who do not have a dangerous probability of successful monopolization. Asserting that USA could not establish the requisite dangerous probability, ARCO concluded that USA had not suffered antitrust injury.

USA opposed ARCO's motion as wholly contrary to the statutory scheme of the Sherman Act and this Court's precedents. Section 1 condemns vertical conspiracies to fix below-market prices, without more, as inherently anticompetitive. Both the express language of Section 1 and this Court's precedents require only an unreasonable restraint of trade and reject the threatened monopoly power requirement proposed by ARCO.

[4]ARCO also moved for summary judgment on USA's attempted monopolization claim under Section 2. USA voluntarily dismissed with prejudice that claim. (CR 82.)

Damages flowing from the anticompetitive effect of such price-fixing is injury of the type the antitrust laws were intended to prevent. USA also filed an affidavit pursuant to Fed. R. Civ. P. 56(f), informing the district court that, in any event, depositions and expert discovery were necessary before the actual marketplace effects of ARCO's price-fixing conspiracy could be determined. (CR 89: Exhibit A.)

Contrary to the impression left by ARCO's petition for a writ of certiorari, the motion for summary judgment did not raise the issue of whether the *level* of ARCO's fixed prices was "predatory." (Petition at 28.) Not surprisingly, the district court made no findings on that issue and instead granted ARCO's motion based exclusively on the absence of threatened monopolization. (App. B, ¶¶ 3-5.)[5]

The Ninth Circuit's Decision

The Ninth Circuit reversed the district court's grant of summary judgment. *USA Petroleum Co. v. Atlantic Richfield, Co.*, 859 F.2d 687 (9th Cir. 1988). The majority of the panel held that to establish antitrust injury USA is required to prove that its damages result from ARCO's agreement with its branded dealers to fix prices below the level that otherwise would have prevailed absent the conspiracy. The court rejected ARCO's contention that the elements of predatory pricing under Section 2, *i.e.*, dangerous probability of successful monopolization, can be engrafted onto a Section 1 price-fixing case under the rubric of antitrust injury.

[5]USA has never conceded that the levels of ARCO's fixed prices are not "predatory." To the extent that the dissenting opinion filed in the Ninth Circuit is to the contrary, it unfortunately misstates the record. *USA Petroleum Co. v. Atlantic Richfield Co.*, 859 F.2d 687, 703 (9th Cir. 1988) (Alarcon, J., dissenting).

ARCO filed a petition for rehearing and suggestion for rehearing en banc. Not a single judge requested a vote on the suggestion for rehearing en banc. On January 10, 1989, the Ninth Circuit entered an order denying ARCO's petition. On April 7, 1989, ARCO filed a petition for a writ of certiorari.

REASONS FOR DENYING THE WRIT

ARCO's petition for a writ of certiorari should be denied because the Ninth Circuit's decision is faithful to the precedents established by this Court. The intercircuit conflict asserted in ARCO's petition is, in reality, a conflict between an overreaching Seventh Circuit, openly hostile to antitrust law, and this Court. The Seventh Circuit's view is that the Supreme Court's decisions condemning maximum price-fixing as injurious to the competitive process are wrong.[6] It has twice ruled that such price-fixing is "lawful price competition" and, therefore, cannot cause antitrust injury to any private plaintiff. In contrast, the Ninth Circuit adhered to this Court's recent rulings,[7] in concluding that USA's damages from its competitor's unlawful price-fixing do constitute antitrust injury.

Moreover, the question framed in ARCO's petition is not ripe for review. ARCO asks this Court to rule that a plaintiff seeking to establish antitrust injury from vertical maximum price-fixing under Section 1 of the Sherman Act must prove predatory pricing. Even

[6] *Indiana Grocery, Inc. v. Super Valu Stores, Inc.*, 864 F.2d 1409, 1419 (7th Cir. 1989); *Jack Walters & Sons Corp. v. Morton Building, Inc.*, 737 F.2d 698, 709 (7th Cir.), *cert. denied*, 469 U.S. 1018 (1984).

[7] This Court reaffirmed the prohibition against maximum price-fixing only last term. *Business Electronics Corp. v. Sharp Electronics Corp.*, 108 S. Ct. 1515, 1525 (1988). ARCO presents no reason why this Court should reopen this issue only one year later.

assuming that this Court is prepared to overrule long-standing precedent[8] and impose such a requirement, this is not the case in which to define, for the first time, what constitutes predatory pricing. In this case, there is no factual record as to the level of ARCO's fixed prices, their relationship to cost, the disciplining effect of the fixed prices, the relationship of ARCO's fixed prices to the prices of other sellers, ARCO's anticompetitive intent, its ability to obtain a return on investment or the marketplace effect of the price-fixing.

Accordingly, this Court should deny certiorari.

I.

AS A PROPER APPLICATION OF THIS COURT'S PRECEDENTS, THE NINTH CIRCUIT'S DECISION SHOULD NOT BE SUBJECT TO FURTHER REVIEW

A. The Supreme Court Has Unequivocally Condemned Vertical Maximum Price-Fixing as Anticompetitive Per Se

This Court has consistently condemned price-fixing, regardless of the level of fixed prices, as antithetical to a free market economy. Price is the free market's "central nervous system." *National Society of Professional Engineers v. United States*, 435 U.S. 679, 692 (1978) quoting *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 224 n.59 (1940)). The inherent anticompetitive effect of all price-fixing agreements that raise, lower,

[8] *See United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 221 (1940); *Arizona v. Maricopa County Medical Society*, 457 U.S. 332, 348 (1982); *Albrecht v. Herald Co.*, 390 U.S. 145, 152-53 (1968); *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211, 213 (1951).

or stabilize prices is that they directly interfere with the free market forces of supply and demand that should set price. *Socony*, 310 U.S. at 221. Because of this injury to the competitive process, this Court has deemed conspiracies to fix below-market prices, such as ARCO's, as anticompetitive.[9] *Arizona v. Maricopa County Medical Society*, 457 U.S. 332, 348 (1982); *Albrecht v. Herald Co.*, 390 U.S. 145, 152-53 (1968); *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211, 213 (1951).

Ultimately, maximum price-fixing discourages both innovation and non-price competition, such as service, that consumers may demand. *Arizona*, 457 U.S. at 348; *Albrecht*, 390 U.S. at 152-53. In addition, maximum resale price maintenance erects artificial barriers to entry. Artificially depressed prices discourage potential entry by competitors, who would otherwise be attracted to higher prices in an unrestrained market. *Arizona*, 457 U.S. at 348; L. Sullivan, *Handbook of the Law of Antitrust* 211-12 (1977).

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[9]This anticompetitive effect justifies the per se rule against vertical maximum price-fixing. *See* Flynn & Ponsoldt, *Legal Reasoning and the Jurisprudence of Vertical Restraints: The Limitations of Neoclassical Economic Analysis in the Resolution of Antitrust Disputes*, 62 N.Y.U. L. Rev. 1125, 1148 (1987). To the extent ARCO requests that this Court revisit the issue of whether vertical maximum price-fixing should be per se lawful, USA objects. (*See* Petition at 15 n.5.) Throughout the proceedings below, ARCO expressly conceded the per se illegality of its conspiracy. *USA*, 859 F.2d at 694. This Court generally does not review questions that were neither raised nor litigated below. *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 697 (1984). This Court reaffirmed the per se rule only last term in *Sharp*, 108 S. Ct. at 1525. This case does not present any basis for reconsideration of established precedent.

B. The Ninth Circuit Correctly Applied Established Supreme Court Precedent

The Ninth Circuit followed 50 years of Supreme Court precedent in holding that a horizontal competitor can establish antitrust injury from ARCO's admitted vertical conspiracy to fix below-market prices.

The Ninth Circuit held that USA suffered injury "of the type the antitrust laws were intended to prevent." 859 F.2d. at 694-97; *see Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977). The court first identified the disruption of market price mechanisms as the fundamental anticompetitive consequence of vertical maximum price-fixing. 859 F.2d at 693. Then, the court looked at the nature of USA's claimed injury. Noting that losses incurred by a horizontal competitor because of its inability to counter artificially depressed prices are precisely the type of loss that the displacement of market forces would be likely to cause, the court held that USA had suffered cognizable antitrust injury. *Id.* at 696-97; *see Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 584 (1986) (plaintiff establishes antitrust injury when defendant fixes price below the level necessary to sell its product).

The Ninth Circuit was careful to apply antitrust injury in a way that serves the Sherman Act's policy of preserving the competitive process. 859 F.2d at 693, 697. It accorded a private right of recovery to the disadvantaged rival and coerced dealer, the persons most immediately impacted by the conspiracy's interference with the market's price mechanisms. Ironically, these are the very private parties expressly excluded by the injury analysis advocated by the Seventh Circuit and ARCO.

C. The Seventh Circuit's Radical Departure from This Court's Precedent Does Not Constitute a Basis for Certiorari in This Case

ARCO's petition relies heavily on the Seventh Circuit's fundamentally different approach to the antitrust injury analysis in maximum price-fixing cases. The Seventh Circuit virtually concedes, however, that its rulings conflict with the decisions of this Court. *Indiana Grocery, Inc. v. Super Valu Stores, Inc.*, 864 F.2d 1409, 1420 (7th Cir. 1989); *Jack Walters & Sons Corp. v. Morton Building, Inc.*, 737 F.2d 698, 709 (7th Cir.), *cert. denied*, 469 U.S. 1018 (1984). It adopted an antitrust injury standard that is designed to ensure that private litigants cannot enforce the substantive vertical maximum price-fixing offense with which it disagrees.

As part of its injury analysis, the Seventh Circuit has imposed a Section 2 element on maximum price-fixing under Section 1.[10] A plaintiff must prove that the conspirators fixed a "predatory" price as defined in that

[10]The Seventh Circuit's superimposition of Section 2 predation requirements on Section 1 claims based on concerted activity contravenes the Sherman Act's basic distinction between concerted activity and single firm conduct. *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 767-68 (1984). A conspiracy to fix price is subject to more stringent scrutiny than unilateral pricing because of its greater anticompetitive risk. *Id.; Fisher v. Berkeley*, 475 U.S. 260, 266 (1986).

Equally inappropriate is ARCO's argument that a plaintiff should be required to prove a dangerous probability of a successful monopolization to establish antitrust injury in a Section 1 case. Section 1 condemns concerted conduct that is an unreasonable restraint of trade. 15 U.S.C. § 1. As this Court has expressly held, under Section 1, "it is not necessary to prove that concerted activity threatens monopolization." *Copperweld*, 467 U.S. at 767-68. Specifically, this Court has recognized that price-fixing can achieve anticompetitive effects even absent a dangerous probability of successful monopolization. *Socony*, 310 U.S. at 221, 224 & n.59.

circuit.[11] *Indiana Grocery*, 864 F.2d at 1420; *Jack Walters*, 737 F.2d at 709.

This requirement stems from the Seventh Circuit's belief that maximum price-fixing is "lawful price competition." *Jack Walters*, 737 F.2d at 709; *see Indiana Grocery*, 864 F.2d at 1418 (maximum price-fixing is itself "competitive"). The Seventh Circuit explicitly acknowledges that its characterization of maximum price-fixing as purely competitive behavior conflicts with this Court's decisions. In *Indiana Grocery*, the court virtually admits that it is overruling *Albrecht*:[12]

> Read in a vacuum, *Albrecht* might seem to prevent us from affirming the district court in this case. *Albrecht*, however, was decided nine years before the Court formulated the antitrust injury requirement in *Brunswick* and says nothing about antitrust injury or antitrust standing. It therefore does not preclude us from applying the antitrust injury concept to Indiana Grocery's price-fixing claim in this case.

Id. at 1420; *see Jack Walters*, 737 F.2d at 706 (anticipating the demise of *Albrecht*).

[11]Predation is defined solely by the level of price. *Indiana Grocery*, 864 F.2d at 1419 (claim rests "on the defendants' fixing of prices *at a certain level*"); *Jack Walters*, 737 F.2d at 709 (fixed prices were not below cost and, therefore, were "lawful prices"). Even the Seventh Circuit does not accept ARCO's proposition that only price-fixers with a dangerous probability of successful monopolizaiton can fix "predatory" prices. *See Indiana Grocery*, 864 F.2d at 1413 n.4.

[12]The court in *Indiana Grocery* rejected a damages claim virtually identical to that reinstated by this Court in *Albrecht*. In *Albrecht*, a dealer sued its supplier for lost sales and depressed profits from having to compete with a maximum price-fixing conspiracy. On remand from this Court, the plaintiff recovered treble damages based on lost profits and loss of going concern value. *Albrecht v. Herald Co.*, 452 F.2d 124, 125-26 (8th Cir. 1971).

The Seventh Circuit's effort to overrule the substantive offense through the guise of antitrust injury is disingenuous. This Court reaffirmed the per se rule against vertical maximum price-fixing only last term. *Business Electronics Corp. v. Sharp Electronics Corp.*, 108 S. Ct. 1515, 1525 (1988). If maximum price-fixing is anticompetitive for purposes of the substantive antitrust laws, it cannot at the same time be "lawful price competition" under antitrust injury analysis. Such semantic gymnastics "divorces antitrust recovery from the purposes of the antitrust laws" in contravention of this Court's decision in *Brunswick*. 429 U.S. at 487. Even a commentator sympathetic to the Seventh Circuit criticized its disregard of controlling precedent:

> I cannot escape the conclusion the Judge Posner—growing impatient with Congress's or the Supreme Court's refusal to overrule *Albrecht*—has decided to undertake that task on his own.
>
> Members of the Chicago School have visions, as do most of us, of the kinds of things that should obtain in a perfect world. . . . But it does not justify taking the matter into one's own hands, no matter how certain we may be that we are right.

Hovenkamp, *Chicago and Its Alternatives*, 1986 Duke L.J. 1014, 1026 (footnote omitted).

Retreating from the Seventh Circuit's wholesale renunciation of *Albrecht*, ARCO proposes an intermediate position.[13] ARCO asserts that the only anticompetitive effect of its vertical conspiracy is the elimination of intrabrand competition and, therefore, only its coerced dealers suffer antitrust injury. (Petition at 17-18.) Disadvantaged horizontal rivals are outside the conspiracy's anticompetitive reach; they do not suffer antitrust injury. (Petition at 8, 18-20.)

[13]Contrary to ARCO's contention, the Seventh Circuit's ruling applies equally to coerced dealers and disadvantaged competitors. The Seventh Circuit set forth the injury analysis in a case in which a dealer sued its supplier and recently extended it to competitors. *Jack Walters*, 737 F.2d at 707; *Indiana Grocery*, 864 F.2d at 1418.

Only last year, however, this Court acknowledged the anticompetitive effects of vertical price-fixing on interbrand competition. *Sharp*, 108 S. Ct. at 1520; *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36, 51 n.18 (1977). In *Sharp*, this Court observed that vertical price-fixing stimulates interbrand competitors to organize similar conspiracies, which in turn facilitates horizontal cartelization. *Sharp*, 108 S. Ct. at 1520; *324 Liquor Corp. v. Duffy*, 479 U.S. 335, 342 (1987) (industry-wide vertical price-fixing is "virtually certain to reduce interbrand competition". Based on this rationale, this Court expressly reaffirmed that vertical maximum price-fixing is per se unlawful. *Sharp*, 108 S. Ct. at 1525.

ARCO does not articulate how its price-fixing benefits competition in this case. ARCO argues that USA would have suffered the identical loss if ARCO-brand dealers had lowered their prices unilaterally. This argument assumes that ARCO-brand dealers would have unilaterally lowered prices to the identical level fixed by the conspiracy. This assumption is not only wholly unsupported in the record but also implausible. ARCO would hardly have resorted to violating the law if it truly believed that ARCO-brand dealers could achieve the same result lawfully. The more plausible inference is that ARCO organized the vertical conspiracy to exert its economic muscle in the retail gasoline market to drive the independents out of the market.

Applying the *Sharp* analysis, should USA and other independents organize vertical conspiracies with suppliers so as to be able to fix prices "competitive" with ARCO's fixed prices? Should the other major oil companies also implement vertical conspiracies with their dealers to fix prices so as to be able to compete with ARCO's fixed gasoline prices? If vertical price-fixing is unlawful, conduct that stimulates its proliferation in the marketplace cannot possibly be considered procompetitive.

The Ninth Circuit properly rejected the Seventh Circuit's attempt to rewrite the substantive antitrust laws and, instead, followed this Court's well-established precedent. The Seventh Circuit's refusal to abide by this Court's rulings does not constitute a basis for further review of this case. Accordingly, this Court should deny certiorari.

II.

ARCO'S "PREDATORY PRICING" QUESTION IS NOT RIPE FOR REVIEW BY THIS COURT

Even assuming, for the moment, that this Court is prepared to overrule decades of precedent and allow price-fixers to escape liability if they do not fix "predatory" prices, this case lacks the factual record necessary to enable this Court to define predatory pricing under Section 1 of the Sherman Act. The absence of an evidentiary record stems from the fact that ARCO did not move for summary judgment below on the ground that it fixed prices that were not "predatory."

This Court has defined "predatory" pricing under Section 1 as "(i) pricing below the level necessary to sell their products, or (ii) pricing below some appropriate

measure of cost." *Matsushita,* 475 U.S. at 584-85 n.8. This Court, in recent cases, has expressly declined invitations to articulate a more precise definition of predatory pricing under either Section 1 or Section 2. *Cargill, Inc. v. Monfort of Colorado, Inc.,* 479 U.S. 104, 117-18 n.12 (1986); *Matsushita,* 475 U.S. at 585 nn. 8-9.

USA's allegations are consistent with this Court's predatory pricing definition under Section 1. USA complains that ARCO fixed prices that are (1) below the market level that would prevail in an unrestrained market absent the conspiracy; or (2) below some appropriate measure of cost. (CR 48: ¶¶ 27-31.) It is entirely possible that, after discovery, USA will prove "predatory" price-fixing and, therefore, render the question ARCO now raises moot.

As ARCO presents a controversy that is not yet ready for review, this Court should deny certiorari and permit USA to undertake discovery and ascertain its proof.

III.

CONCLUSION

As the Ninth Circuit's decision is consistent with Supreme Court precedent and, in any event, the question raised by ARCO is not ripe for this Court's review, the opinion below should not be subjected to further review. ARCO's petition for a writ of certiorari, therefore, should be denied.

Respectfully submitted,

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I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11333 Iowa Avenue, Los Angeles, California 90025; that on May 9 , 1989, I served the within *Respondent's Brief in Opposition to Petition for a Writ of Certiorari* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on May 9 , 1989, at Los Angeles, California.

Betty J. Malloy
(Original signed)